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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

A126762

v.

**(Solano County
Super. Ct. No. FCR256922)**

JOHN CALEB COWPER,

Defendant and Appellant.

_____ /

John Caleb Cowper appeals from an order reinstating his probation. He contends the evidence is insufficient to support the conclusion that he willfully violated his probation. We disagree and will affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

The facts of appellant's underlying offense are not relevant to the issue that has been raised. It should suffice to say that in January 2009, pursuant to a plea bargain, appellant pleaded no contest to evading a police officer (Veh. Code, § 2800.2, subd. (a)), and driving with a blood alcohol content of .08 percent or higher (Veh. Code, § 23152, subd. (b)). The trial court suspended the imposition of sentence and placed appellant on probation. As is relevant here, one of the terms of appellant's probation required that he enroll in and complete an "SB-38" program, a program that is designed to educate and

treat those who have been convicted of driving under the influence on more than one occasion.

In April 2009, appellant asked the court to grant him an extension of time to enroll in an SB-38 program because he was in custody at the time. The court granted the request.

Appellant apparently was released from custody, but he was having problems in his life. Appellant's parents would not let him live with them, and his sister's house was too small. In addition, appellant was having money problems. In July 2009, the court granted appellant a second extension to August 19, 2009, to enroll in an SB-38 program.

Appellant began a relationship with a girl and they rented an apartment together. The girl did not have a job and appellant was paying all the expenses for both of them. Then appellant committed an act of domestic violence against the girl and he was placed in custody between August 12 and August 27, 2009. Appellant did not enroll in the SB-38 program by August 19, 2009, "main[ly]" because he was in custody.

Appellant's girlfriend left him, and by the end of September 2009, he had enough money to enroll in the SB-38 program. Appellant's attorney had scheduled a hearing for September 28, 2009, to request yet another extension of time to enter the SB-38 program.

However, on September 27, 2009, appellant began to experience mental problems. He missed his court hearing on September 28, 2009, and he was civilly committed under Welfare and Institutions Code section 5150 the following day. Appellant was released on October 14, 2009.

On November 9, 2009, a hearing was conducted to determine whether appellant had violated his probation by, inter alia, failing to enroll in an SB-38 program. After considering the evidence set forth above, the court ruled appellant had violated his probation explaining its decision as follows:

"I first ordered him to enroll in January, and I understand that when he went back in April, he was not out of custody, but the fact is he never made any attempt to enroll at all.

“I can understand it if he was in the program and then couldn’t continue at some point, but we put him back in, in April; we put him back in, in July. And the only reason he has now why he didn’t enroll between July and now is he got, apparently, involved with some incident that’s still unresolved for which he was arrested.

“And the fact is, I just don’t think that it’s okay to create situation after situation. I understand the mental component of this is not creating the situation. I understand that. But I think he’s had more than adequate opportunities to get himself enrolled in a program.

“Now, if we were talking about why he hasn’t successfully completed it, that might be something else. But we’re just talking about getting him to enroll in the program, and as of now, as far as I’m aware, he’s never enrolled in anything.

“He had enough money to get an apartment with his girlfriend. He had enough money to take care of other matters. So I do feel that he is in violation of probation considering the standard of proof which is required here, which is a preponderance of [the] evidence, and the violation itself, which is failing not to complete the program, but to enroll in the program. I am going to find that he is, in fact, in violation of probation for failing to enroll.”

Accordingly, the court revoked but then reinstated appellant’s probation and ordered him to enroll in an SB-38 program within 60 days of his release.

II. DISCUSSION

Appellant contends trial court erred when it ruled he had violated his probation.

Penal Code section 1203.2, subdivision (a) states that a court may revoke probation “if the interests of justice so require and the court, in its judgment, has reason to believe . . . that the person has violated any of the conditions of his or her probation” Trial courts are granted broad discretion to determine whether a defendant has violated his probation and a court’s ruling on that issue will be reversed on appeal only where the court abused its discretion. (*People v. Kelly* (2007) 154 Cal.App.4th 961, 965.)

Appellant contends the trial court erred because the evidence was insufficient to support the conclusion that he *willfully* violated his probation. Case law does hold that a

probation violation must be willful (see, e.g., *People v. Galvan* (2007) 155 Cal.App.4th 978, 982; *People v. Zaring* (1992) 8 Cal.App.4th 362, 378-379). However, the evidence here was more than sufficient to support the conclusion that appellant willfully failed to enroll in an SB-38 program. The trial court first ordered appellant to enroll in that program in January 2009 and by November 2009, appellant still had not done so. While the record indicates that appellant faced financial and even mental challenges during that time period, as the trial court noted, appellant “had enough money to get an apartment with his girlfriend. He had enough money to take care of other matters.” Indeed, appellant admitted that in September 2009, he was able to come up with enough money to attend the SB-38 program because he “wasn’t spending it on a girlfriend” at that time. The trial court could reasonably conclude that appellant had failed to prioritize his life adequately and that his failure to enroll in the SB-38 program was willful.

Appellant contends his comment about no longer spending money on his girlfriend “should not be construed out of context to suggest that he had prioritized his girlfriend over the program; rather, the more reasonable reading of his testimony is that he simply was explaining to the court his particular financial predicament which prevented him . . . from enrolling in the program.” Appellant also claims that “[b]ut for his mental health commitment, it seems likely that [he] would have complied with his obligation on September 28, 2009.” Both these arguments fail to take into account the applicable standard of review. Appellant has challenged the sufficiency of the evidence, and as with any substantial evidence question, we review the evidence in the light most favorable to the court’s ruling below. (*People v. Coffman and Marlow* (2004) 34 Cal.4th 1, 89.) The record here, viewed in the appropriate light, was more than sufficient. The fact that the record also contains other evidence that might support a different conclusion is irrelevant. (*People v. Castro* (2006) 138 Cal.App.4th 137, 140.)

We conclude there is substantial evidence to support the conclusion that appellant willfully violated his probation.

III. DISPOSITION

The order placing appellant on probation is affirmed.

Jones, P.J.

We concur:

Needham, J.

Bruiniers, J.